

Chapter 1.10

CONSTITUTIONAL TAKING

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1.10.010 Purpose.

The purpose of this chapter is to establish guidelines and a procedure for review of city actions that involve a physical taking or exaction of private real property that may have constitutional taking issues. This chapter is further intended and shall be construed to objectively and fairly review claims by citizens that a specific government action should require payment of just compensation, yet preserve the ability of the city to lawfully regulate real property and fulfill its other duties and functions.

1.10.020 Definitions.

A. "Constitutional taking" means actions by the city involving the physical taking or exaction of private real property that might require compensation to a private real property owner because of:

1. The Fifth or Fourteenth Amendment to the Constitution of the United States;
2. Article I, section 22, of the Utah Constitution;
3. Any court ruling governing the physical taking or exaction of private real property by a government entity;

B. Action by the city involving the physical taking or exaction of private real property is not a constitutional taking if the physical taking or exaction bears an essential nexus to a legitimate governmental interest; and is roughly proportionate and reasonably related,

on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

1.10.030 Exclusion from chapter.

This chapter shall not apply when the city formally exercises its power of eminent domain or when it regulates real property or requires payment of fees where there is no physical taking or exaction of the property.

1.10.040 Guidelines advisory.

The guidelines adopted and decisions rendered pursuant to the provisions of this chapter are advisory only, and shall not be construed to expand or limit the scope of the city's liability for a constitutional taking. The reviewing body or person shall not be required to make any determination under this chapter except pursuant to section 1.10.050.

1.10.050 Review of decision.

Any owner of private real property who claims there has been a constitutional taking of his private real property may request a review of a final decision of any officer, employee, board, commission, or council. The following are specific procedures established for such a review:

A. The person requesting a review must have obtained a final and authoritative determination relative to the decision from which he is requesting review.

B. Within thirty (30) days from the date of the final decision that gave rise to the concern that a constitutional taking has occurred, the person requesting the review shall file in writing, in the office of the city recorder a request for review of that decision. A copy shall also be filed with the city attorney.

C. The city council, or its designee, shall immediately set a time to review the decision that gave rise to the constitutional taking claim.

D. In addition to the written request for

review, the applicant must submit, prior to the date of the review, the following:

1. Name of the applicant requesting review;
2. Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners;
3. A detailed description of the grounds for the claim that there has been a constitutional taking;
4. A detailed description of the property taken;
5. Evidence and documentation as to the value of the property taken, including the date and cost at the date the property was acquired. This should include any evidence of the value of that same property before and after the alleged constitutional taking, the name of the party from whom purchased, including the relationship, if any, between the person requesting a review and the party from whom the property was acquired;
6. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership or leasehold interest;
7. Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three years prior to the date of application;
8. All appraisals of the property prepared for any purpose, including financing, offering for sale, or *ad valorem* taxation, within the three years prior to the date of application;
9. The assessed value of and *ad valorem* taxes on the property for the previous three years;
10. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to,

right of purchasers to assume the loan;

11. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;

12. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;

13. For income producing property, itemized income and expense statements from the property for the previous three years;

14. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

15. The city council or its designee may request additional information reasonably necessary, in its opinion, to arrive at a conclusion concerning whether there has been a constitutional taking and the amount of such taking.

E. A request for review shall not be deemed to be "complete" or "submitted" until the reviewing body/official certifies to the applicant, that all the materials and information required body/official above have been recorded by the city. The reviewing body/official shall promptly notify the applicant of any incomplete application.

F. The city council, or its designee, shall hear all the evidence related to and submitted by the applicant, city, or any other interested party.

G. A final decision on the review shall be rendered within twenty-one (21) days from the date the complete application for review has been received by the city recorder. The decision of the city council, or its designee, regarding the results of the review shall be given in writing to the applicant and the officer, employee, board, commission or council that rendered the final decision that gave rise to the constitutional taking claim.

H. If the city council, or its designee, fails to hear and decide the review within twenty-one (21) days, the decision appealed shall be presumed to be approved.

1.10.060 Reviewing guidelines.

The city council, or its designee, shall review the facts and information presented by the applicant to determine whether or not the action by the city constitutes a constitutional taking as defined in this chapter. In doing so, the following shall be considered:

A. Whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest.

B. Whether a legitimate governmental interest exists for the action taken by the city.

C. Whether the property and exaction taken is roughly proportionate or reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

1.10.070 Results of review.

After completing the review, the reviewing body shall make a determination regarding the above issues and where determined to be necessary and appropriate, shall make a recommendation to the officer, employee, board, commission or council that made the decision that gave rise to the constitutional taking claim.